

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on February 8, 1999 at  
10:00 A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)

**Members Excused:** Sen. Bill Wilson (D)

**Members Absent:** None.

**Staff Present:** Keri Burkhardt, Committee Secretary  
David Niss, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 175, 1/27/1999  
Executive Action: HB 175, HB 36

**HEARING ON HB 175**

**Sponsor:** REP. KIM GILLAN, HD 11, BILLINGS

**Proponents:** Joe Kerwin, Deputy of Elections, Secretary of  
State

**Opponents:** None

**Opening Statement by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter :11 - 21}*

**REP. KIM GILLAN, HD 11, Billings,** explained that **HB 175** allows, but not requires, candidates to file via the fax. Technology today has made the quality of faxed documents considered first hand. Initiatives last session gave permission to the Secretary of State to receive some other business filings by fax without having to have them followed up within 5 days with a paper copy. This is permissive, so in county offices where a fax is not available this bill would not require them to purchase a fax machine. This bill focuses on the Secretary of State. The nomination form still has to be notarized and the filing fee must still be sent in. She said that many candidates make the decision to run well in advance of the deadline to file for nomination, but when there are distances involved the ability to file by fax could be very significant.

**Proponents' Testimony:**

**Joe Kerwin, Deputy of Elections, Secretary of State,** stated they support the bill. It gives them a little more flexibility in allowing candidates to file. He said people have been inquiring about filing via the fax. They decided since it wasn't clear in the law that they could file by fax they would not allow people to. By putting this clearly in the law it allows them to do that. The candidate filing form would still need to be notarized and they would still have to pay their filing fee. This bill makes it easier for candidates to get on the ballot and increases their access. This is optional and doesn't require the counties to purchase a fax machine if they do not have one.

**Questions from Committee Members and Responses:**

**SEN. TESTER** asked if people could currently fax and send in a hard copy to meet the deadline. **Joe Kerwin** said the hard copy would have to be in by the filing deadline, therefore it would not be necessary to fax. **SEN. TESTER** asked how the notarization would work. **Joe Kerwin** said the fax would have to be received by the deadline along with the filing fee, so the form would have to be notarized prior to being faxed. He added that the election bureau is responsible for the filing of notaries in the state and they have a computerized list of all the notaries. He said they can check the notaries and pull their application to check signatures if there is ever a question of authenticity.

**SEN. COLE** asked if e-mail would also be accepted as well. **Joe Kerwin** said that e-mail would not be accepted because it would not be able to be notarized. **SEN. COLE** asked if this includes write-ins as well. **Joe Kerwin** said they want to be able to

provide write-in candidates with the same opportunity to get their filings in as any other candidate.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 21 - 31}***

**REP. GILLAN** urged the committee to support this bill.

**DISCUSSION ON HB 36**

**REP. JOE QUILICI, HD 36, Butte,** explained that HB 36 moves the date from 1997 to 1999. The proposed date changes are needed to ensure that Montana can adopt a state law, military related federal laws and regulations that have changed and were amended in 1997. The Montana Supreme Court said that the legislature has the right to adopt existing federal laws and regulations as state law but it does not have the right to adopt changes in federal laws and regulations that are to occur sometime in the future. This bill is just abiding by a supreme court ruling to say that our laws cannot be changed prospectively. He added that the House State Administration Committee changed every place that said military forces or militia to national guard. He said that he does not know why they changed it.

**SEN. WELLS** said that the objective may have been to separate the federal regulations which govern National Guard and other members on active duty. There may be differences in the way our state militia is regulated.

**REP. QUILICI** said that if it defines it a little more closely and retains our state rights, then he doesn't have a problem with the change.

**EXECUTIVE ACTION ON HB 36**

***{Tape : 1; Side : A; Approx. Time Counter : 31 - 48}***

**Motion/Vote:** **SEN. TESTER** moved that **HB 36 BE CONCURRED IN.**  
**Motion carried 5-0.**

**DISCUSSION**

The committee discussed a letter to Kansas congressmen, formerly requesting the assistance of the congressman, to prohibit the federal government from claiming any funds Kansas has received from its tobacco litigation settlement. They discussed putting a similar message to Montana state's congressional delegation in a joint resolution.

**EXECUTIVE ACTION ON HB 175**

**Motion/Vote:** SEN. TESTER moved that HB 175 BE CONCURRED IN.  
**Motion carried 4-0.**

**EXECUTIVE ACTION ON SB 292**

SEN. TESTER said he would like to incorporate a similar bill he is sponsoring, into this bill. It would change the bill to include making false statements about one's own voting record.

**Motion/Vote:** SEN. TESTER moved that SB 292 BE AMENDED. Motion carried 4-0.

**Motion/Vote:** SEN. TESTER moved that SB 292 BE CONCURRED IN AS AMENDED. Motion carried 4-0.

**DISCUSSION ON SB 356**

SEN. COLE said that people from financial districts may not feel like they are receiving the representation from the commissioner if they feel the commissioner will be more focused on the needs of the reservation. He said that he thinks there may be a conflict of interest. He added that he would rather see someone with background in Indian transportation needs, and was not a member from any other district. He said the down side to having six members is that the group could have ties. He talked about the amendment for the bill, which required the member to be a current or former contractor, and said that it could create conflicts. The sponsor said that it wouldn't create any conflicts as long as the contractor couldn't vote on awarding the contracts. SEN. COLE said that the people in the district, represented by the contractor, may not feel like they are getting the representation the other districts are receiving because the contractor would not be able to vote on half the issues. He replied the contractor should be inactive or retired for 3 years

before he is allowed serve on the board. He added that people on other boards do not get their money directly from the state.

**SEN. HARGROVE** said that many other committees and boards have members with expertise in specific fields. He said that he realizes this one is unique. He asked **David Niss, Legislative Council**, if there are legal problems with having the contractor serve as a commissioner.

*{Tape : 1; Side : B; Approx. Time Counter : 48 - 62}*

**Mr. Niss**, said that the legal problems could be prevented by having the member declare he has a conflict of interest and choose not to vote on the issue. He said that many boards have requirements to have representation from a profession.

**SEN. COLE** said that the problem may be eliminated by having the member be inactive or retired.

**Mr. Niss**, explained that the statute says the member has to be an active highway contractor but is disqualified from voting for the purposes of awarding any contract that might involve their interest.

**SEN. HARGROVE** said that in order to eliminate the conflict of interest he wanted to amend the amendment.

**Motion:** **SEN. HARGROVE** moved that the amendment to **SB 356 BE AMENDED**.

**SEN. TESTER** said that this is a little bit different, in that the money they are paid is coming directly from the state. If something comes up that seems inappropriate it will make the entire outfit look bad, even if everyone acted in the best of interests.

**SEN. WELLS** asked **Mr. Niss** to clarify what the conceptual amendment would say.

**Mr. Niss** said that it would say that the member is required to disqualify himself on the awarding of any contracts that directly effect his interests if he is a current contractor. He added rather than saying that any contractor shall be disqualified from voting they could word the amendment to say the contractor is disqualified from voting.

**SEN. COLE** suggested that they give the Governor the option of appointing a highway contractor. He said that if a contractor did not step forward to choose from, then the position may be vacant.

**SEN. WELLS** suggested that they require the Governor to appoint a highway contractor if he is presented with a list.

**SEN. COLE** said that they should possibly remove the Contractors Association from the bill.

**SEN. WELLS** said that the wording should say that if a list is not submitted to the Governor, then he is free to appoint others.

*{Tape : 1; Side : B; Approx. Time Counter : 62 - 79}*

**Motion:** **SEN. HARGROVE** withdrew motion to **AMEND SB 356**.

**SEN. WELLS** said under current law the Governor could appoint a contractor and the contractor may or may not be a member of the Contractors Association or on the list.

**SEN. HARGROVE** said that the amendment is saying that one person must be chosen by from the list submitted by the Contractors Association and, in essence, the association is appointing one person to the commission.

**SEN. WELLS** said that even if the member should declare himself disqualified, it may not be obvious to the committee when a conflict of interest arises. If the member's company is involved in the bid, he should have to bring this to the commission's attention and disqualify himself.

**SEN. HARGROVE** said that the disclaimer should be included in the amendment. The member must make a statement of disqualification.

**Motion/Vote:** **SEN. HARGROVE** moved that **SB 356 BE AMENDED**.

### **INFORMATION MEETING ON SB 228**

**Joe Kerwin, Deputy of Elections, Secretary of State,** said many questions came up during the working group, mainly about the date when the election would be held. There was concern as to whether the date should be in May or whether the political subdivisions should be given some flexibility as to when they will hold their

tax election. There was also concern from the schools about having the election in May as opposed to April. The consensus from the group was that they could go with the May election if they had the option of holding a November election as well so they could choose one or the other. The state election would still be held in May, but the counties could have the option to hold their tax election in November. They are only allowed to have their tax election once during the year. The group wanted contingent provision put in the bill. They also felt that property valuations from the previous year should be used. There were some questions whether SB 228 needed to be as comprehensive as it is or whether a simpler bill could be drafted to effectuate the changes that would be necessary. The date for the tax election still needs to be decided.

**SEN. COLE** asked when various entities would know what their values were.

**Dolores Cooney, Department of Revenue**, explained how the mill levy works **EXHIBIT(sts31a01)**. She said a mill levy is basically a calculation between the budget for the jurisdiction and the taxable value. The mill levy is what is multiplied against the taxable value for each properties in order to get to the basic tax. She explained the history of how the assessment process works **EXHIBIT(sts31a02)**. She said the assessment starts with the valuation and classification of the property. Real property and personal property valuation dates are January 1st. Once the basic valuation and classification is done, they begin on the application of the special tax classification such as the class 4 reductions, which is based on income, the disabled veterans' reductions, and the exemptions. She explained that those are applied before the taxable value is calculated. Currently, the assessments are then mailed. She pointed out the dates that were projected prior to this legislative session for the mailing of the assessments this year. She said once the assessments are mailed the taxpayers have rights for review. They have the right to request from the Department of Revenue for a review of their appraisal within 30 days of the mailing of the assessment. That process is prior to the beginning of the county tax appeals and the state tax appeals that occur later in the year. She said there are basically 12 classes of property. If the certification of the property is moved up, the one class that may present a problem is the centrally assessed properties because they need to have their year end calculations, in the individual industries, in order to project their unit value. Currently, the certification of the taxable value, which is with the mill levy, happens the 2nd Monday in July and is reported by taxing

jurisdiction. The class 4 separation was required before CI-75. The certified mill levy calculation starts with the taxable valuation of the previous year and the mill levy from the previous year and goes through a series of calculations (**SEE EXHIBIT 1**). The last page shows a hypothetical year 1 and year 2 in the taxing jurisdiction. Year 1 describes the scenario if the jurisdiction lost taxable value. In this case, there would be a rise in that mill levy. Year 2 describes the scenario if the jurisdiction increased the taxable value. In this case the mill levy would decrease. She gave examples of some counties who saw a decrease in taxable valuations.

**SEN. HARGROVE** asked what some of the problems would be if they used the previous year's values and if these problems were in surmountable.

**Dolores Cooney** said that the department would have to move up the assessment dates in order to get that mill certified two months earlier than it currently is. The one exception could be the centrally assessed properties, which don't come in until about year end.

**SEN. HARGROVE** asked what the difficulties would be for the local jurisdictions if they used last year's valuations.

**Dolores Cooney**, said there would only be a problem in the case of a decrease in taxable valuation. She added that the local jurisdiction would probably know about the decrease ahead of time.

**SEN. HARGROVE** asked if they could handle that.

**Dolores Cooney**, said they would want to be exact possible, but it would be possible to get the bulk of the value.

**SEN. HARGROVE** asked if they would put it off on paper until the next year.

**Dolores Cooney** said that under CI-75 the mills have to be set and voted on. Most of the time there would be an increase in taxable value but they would need to be prepared for a decrease. She added that she believes there is a provision for an emergency election in the event of a major decrease.

**SEN. HARGROVE** asked **Mr. Kerwin** to comment on the discussion held during the working group meeting because it was his understanding that over coming the problems were not insurmountable.



**Mr. Kerwin** said he wasn't an expert in property valuations but the general discussion seemed to be that it was not insurmountable. He suggested that he ask some of the other people involved.

**SEN. HARGROVE** asked **Gordon Morris** to speak on the subject.

*{Tape : 1; Side : B; Approx. Time Counter : 79 - 90}*

**Gordon Morris, Director, Montana Association of Counties**, said that with the May suggested primary date and the November general election option, they would have one date but two opportunities. For the first year the problem is going to be getting a budget. Then it will be living with it every year thereafter. He recommended the county budget based upon the prior year's taxable value. They will always be one year behind after the second year. He added there is no emergency provision. The emergency provision applies to the state legislature only. The county has no emergency provision to go to the voters for a tax increase. The only thing they could do is set the number of mills and if the value of that mill goes down below the previous year, they would have to reduce their budget.

**SEN. HARGROVE** said there is still the two mill emergency that is covered under CI-75 for certain kinds of emergencies.

**Mr. Morris** said that a vote under CI-75 would be required.

**SEN. HARGROVE** said that they will have to have a special section for calendar year 1999. He asked if they can do something in the section to take care of the problem for the first year.

**Mr. Morris** explained that the problem will be getting values that are true and accurate by August 1st. Currently, the department certifies the values and the certification is the assumed value that mill will raise for every taxing jurisdiction relative to the budgets they will set in August. He said he doesn't see a real problem with working from the previous year.

**SEN. ALVIN ELLIS, SD 12, Red Lodge**, asked if the certification could be advanced to where the June primary currently is.

**Dolores Cooney**, said they could produce the year's assessments earlier. She said that May 1st would be the projected certification date moved from the 2nd in July.

**SEN. HARGROVE** asked if they could use those assessments for an election.

**Dolores Cooney**, said that they could use the combination of the assessments and last year's budget. The central assessment would be missing.

*{Tape : 2; Side : A; Approx. Time Counter : 90 - 119}*

**Mr. Morris**, said the bill could be simplified considerably. He suggested that the committee put in a statement of intent, a declaration of policy, and strike everything from the bill except for Section 66-68. This Section defines what a tax election is. He that they are dealing with issues which would not be considered tax elections by the drafters of CI-75. He said, the intention of CI-75 is to provide for two opportunities to go to the voters with a tax election and those dates are the June primary and the November general election. There would not be enough time to prepare for a June primary in 1999 so the only opportunity for a tax election in 1999 is November for tax purposes associated with fiscal year 2001.

**SEN. HARGROVE** stated that the committee had to make a policy decision as to whether it was the intent of the voters to have tax elections held on two dates.

**Mr. Morris** replied he thinks that the drafters meant that there were two opportunities, but an entity could only use one of them, and those were the June primary and the November general election.

**SEN. HARGROVE** said asked if he was still anticipating one tax election per year.

**Mr. Morris** said there were two opportunities but the entity could only use one of them.

**SEN. ELLIS** asked if a county government could use a different date than a school or city government.

**Mr. Morris** explained there is no logic in CI-75 to dictate that all jurisdictions vote simultaneously.

**SEN. HARGROVE** said that the reason they gave the working group the date of the 1st Tuesday in May was to try and get that current year's assessment. If everyone is comfortable with not

having to try to squeeze everything they can out of that, the June primary might be alright.

**Don Waldron, Rural Education Association,** said that moving to June would not work for them. He said that they need to be moved far enough from June to be able to notify their staff if they are going to be rehired or not.

**SEN. ELLIS** said he has a bill that does not have a contingent provision. It also limits schools to one election and puts it at the primary time. He said that he doesn't have a problem with the date change but he is concerned that they don't overly lengthen the campaign cycle for the legislators. He said even if CI-75 does not come into effect, it would be better to have this limit on schools.

**Loran Frazier, School Administrators,** said that any time the committee could give schools prior to June would be appreciated because if the election doesn't go well, they will be cutting teachers and those people will be looking for jobs in June. This is late for teachers looking for work, especially if they have to relocate.

**SEN. COLE** asked if May would be better.

**Mr. Frazier** said they could probably live with May. He added they would have to have the date around the time they would know what the mill value is.

**Robert Throssell, Montana Association of Clerk and Recorders and Election Administrators,** said the June primary could be moved back but it would entail more changes. They need to think two months in advance for the election administrator to get the ballots ready.

**Mr. Waldron,** stated he agrees there is more then there has to be. They should really focus in on revenue dates and election dates.

**Alec Hansen, League of Cities,** said they want one date as close as possible to the beginning of the fiscal year for the finance election required under CI-75. He said a good compromise between the concerns about the fiscal year and the construction season is the date early in May. He said for political purposes they would like to keep the municipal and primary dates in September and November in the odd number years. There is a lot of concern about having a municipal primary election sometime in May, which would give a 7 or 8 month campaign season. He said that the

municipal primary in September shouldn't be a problem because they have paid for it.

**SEN. TESTER** asked if they could have certified values on everything except the central assessments by the middle of March.

**Dolores Cooney** said she believed they could.

**SEN. TESTER** asked why the central assessments can not be completed in time.

**Dolores Cooney** explained they are valued on a unit basis and their year end reports are critical in their valuation process. She said she would prepare some information for him.

**SEN. TESTER** said he is looking for reasons why it can't be done.

**Mr. Kerwin** said if they are going to have ballots available, they need to make them all available at once. He said they would be certifying the ballot, to the counties, for a May election on February 27 and the clerks would begin certifying and printing the ballots on March 3rd. A brief discussion was held as to when the election would be held this year. It was the consensus that they were only looking at one opportunity for a tax election this year and it would be set for the general election date in November.

**Mr. Hansen,** said there are city and county mill levies that may need to be renewed before the November election date. He said for this transition period he recommends setting the date at something that would get them as close to the beginning of the fiscal year as possible.

**Mr. Kerwin** said that they need to address how tax elections will be held in 1999.

**SEN. ELLIS** said that schools must have a tax election this spring.

**SEN. HARGROVE** said September or June would be the two choices.

**Mr. Frazier, Mr. Waldron, and Mr. Hansen,** said their assumption was that the May election would be starting in 1999.

**SEN. HARGROVE** asked **Mr. Kerwin**, assuming the bill was moved through as fast as possible, would they be able to hold the election in May this year.

**Mr. Kerwin** said for local governments it would be possible to get their information into the clerks in time to get the ballots printed but not the state. He said that he is not sure when all the revenue bills would work their way through the legislature.

**{Tape : 2; Side : A; Approx. Time Counter : 119 - 126}**

A brief discussion was held as to whether they could shorten up the notification dates for this one election. **Mr. Kerwin** said that it is possible because it is not a federal election but in the future they would like to keep it at 45 days. He said the candidate filing dates would change automatically. They are currently set at 75 days before the primary, however, they are set by statute so the time period can be shortened in the bill. He added the number of ballot issues will dictate how long it will take for printing. He said that the more issues on the ballot the greater the need for the voters to know what is going to be on the ballot. He said that because this is a transition, there can be some flexibility.

**SEN. TESTER** asked if **Dolores Cooney** if she would find out if the certification dates could be moved up starting in 1999. The school elections will not be able to be held unless part of those are certified.

**Mr. Throssell** said his people face two problems. The physical process of printing the ballots requires time to review the proofs. If there were a large number of ballots it compounds the process. The counties that have gone to electronic voting punch cards must have their machines programmed. Depending on the number of issues on the ballot they may not have the computer capacity to do them all, which would cause them to use paper as well as the computer. They will work very hard this first time through.

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**ADJOURNMENT**

Adjournment: 12:06 P.M.

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SEN. MACK COLE, Chairman

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KERI BURKHARDT, Secretary

MC/KB

**EXHIBIT (sts31aad)**